

15 March 2009

## MEMORANDUM

FROM: Senator Shockley

TO: Representative Kerns

SUBJECT: HB - 228

## NEW SECTION: Section 1. Purpose

A. Do not change.

B. Modify as follows: "*(5) if **evidence of self-defense has been offered** a defendant in a criminal action, the state has the burden to prove the absence of justification beyond a reasonable doubt.*"

C. Note: (5) is very important. When the defense of self defense is properly raised by the defense the burden shifts to the prosecution to prove beyond a reasonable that the defense of self defense is not warranted. I believe that was the common law, is the federal law, and used to be the law in Montana. This may be the most important provision of this bill.

## NEW SECTION: Section 2. No duty to summon help or flee.

A. Do not change.

B. Add the following.

1. Notwithstanding any other provision of law any occupant of a dwelling is justified in using any degree of physical force, including deadly force, against another person when that other person has made an unlawful entry into the dwelling, and when the occupant has a reasonable belief that such other person has committed a crime in the dwelling in addition to the uninvited entry, or is committing or intends to commit a crime against a person or property in addition to the uninvited entry, and when the occupant reasonably believes that such other person might use any physical force, no matter how slight, against any occupant.

2. Any occupant of a dwelling using physical force, including deadly force, in accordance with the provisions of subsection ( just above) of this section shall be immune from criminal prosecution, or civil liability, for injuries or death resulting from the use of such force.

C. Note: While the current section is really necessary because one should not have to retreat from an assailant and can stand his ground in a corn field, the addition takes the castle doctrine about as far as it can go. No need to enter the house in a manner that is "violent, riotous, or tumultuous manner" etc. See 45-3-103, MCA. If the bad guy comes in just to just steal something he can be shot. The current section just restates the case law, which is good. The addition puts a moot around the castle, and raises the height of the wall. The NRA supported a similar provision in Colorado and it was called the "make my day law".

NEW SECTION: Section 3: Defensive display of firearm not offense.

A. Delete the section.

B. Add the following:

1. A person can communicate the fact that he has a weapon. It is not necessary that the person believe that he is threatened and any person who is not otherwise prohibited by from doing so by federal or state law may carry a weapon openly.

2. If a person reasonably believes that he, or another person, is threatened with bodily harm the person may threaten the use of deadly force against the aggressor, *to include drawing a weapon in appropriate circumstances.*

C. Note: This does away with the Yosemite Sam provision which is, in my opinion, bad public policy. It is not even good gun safety to encourage a person to waive his firearm even if it is not directly pointed towards another person, and it makes it more difficult to convict a wrong doer.

NEW SECTION: Section 4. Investigation of alleged offense involving self-defense claim.

A. Do not change.

B. Note: This is the law, and if the cops do not do it now, they will not do it with this provision.

NEW SECTION: Section 5. Firearm not to be destroyed.

A. Do not change.

B. Note: This is not necessary. We always say it is about people, not about guns. To give a gun a special status is contrary to our argument that people commit crimes, not guns.

NEW SECTION: Section 6. Landlords and tenants - no firearm prohibition allowed.

A. Do not change.

B. Note: I would not have put this section in because it draws fire on property rights issues and there

is not a problem with taking guns into a motel; why make trouble where there is none? As for prohibiting discharging the firearm except in self-defense - no kidding.

Section 7. Section 45-8-315, MCA, is amended to read:

A. Do not change.

B. Note: There is not substantive change to the statute.

Section 8. Section 45-8-316, MCA, is amended to read:

A. Delete the entire statute.

B. Substitute:

1. A person may carry a concealed weapon, as defined in 45-8-315, upon the person, unless the person would be prohibited by 45-8-321(a) through (h) from obtaining a concealed weapon permit.

C. Note: It is difficult to amend the statute just because of the way it is written. Subsection (2) allows a convicted felon to carry a conceal weapon when he cannot, by virtue of the federal law, to even possess a firearm. This is simpler and prohibits bad people from carrying concealed when they are not eligible to obtain a permit. We honest gun owners are not about facilitating felons possessing guns.

Section 9. Section 46-6-502, MCA, is amended to read.

A. On page 5, line 16, delete all after "person".

B. Note: The codes referred to confuse the issue; e.g. 45-3-101, MCA; **Definitions**, 45-3-102, **Use of force in defense of person**; 45-3-103, MCA, **Use of force in defense of occupied structure**; 45-3-104, MCA; **Use of force in defense of other property**, 45-3-105, MCA; **Use of force by aggressor**, and 45-3-106, MCA, **Use of force to prevent escape**.

Respectfully,

Jim Shockley

cc: Mr. President

President Pro Tempore McGee

Mr. Majority Leader

Chairman Perry

Gary Marbut - via email

Brian Judy - via email